IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Revision Nos.75 and 76 of 2007.

Date of decision:6.12.2007.

---

1. **Civil Revision No.75 of 2007.**

Smt.Janki Devi …Petitioner

Versus

Sh.Vidya Sagar Sethi …Respondent

2. **Civil Revision No.76 of 2007.**

Smt.Janki Devi …Petitioner

Versus

Sh.Raj Kumar …Respondent.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.Vikas Bhardwaj, Advocate.**

For the Respondents: **Mr.Vivek Thakur, Advocate.**

Dev Darshan Sud,J.

Both these revisions are being disposed of by a common order as they deal with the same controversy, that is, as to whether the order passed by the Rent Controller, dismissing the applications for leading secondary evidence filed by the petitioner, is sustainable in law.

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

The petitioner, who is the landlady, preferred an application under Sections 65 and 66 of the Indian Evidence Act, 1872 (hereinafter referred to as the `Act') praying for permission to lead secondary evidence for proving Will dated 18.8.1983 executed by husband of the petitioner-landlady, vide which, according to the petitioner, the property in question had been bequeathed to the petitioner-landlady. This was necessitated because respondent had challenged the title of the landlady in the eviction petition which was instituted against him.

The application was resisted by the respondents and the Rent Controller by his judgment, dismissed the application holding inter alia that no attested copy of the registered Will has been filed with the application under Sections 65 and 66 of the Act, there is an admission made in the rejoinder submitted by the landlady that the Will was produced in Court in Civil Appeal No.197/86. In the circumstances, it was held by the Court below that it cannot be assumed that the Will has been destroyed. The application was thus dismissed.

Learned counsel for the petitioner submits that the order is not in accordance with law as the Court below has failed to consider the application in accordance with the principles applicable for grant of permission to lead secondary evidence. Learned counsel submits that the Court below has acted

illegally ignoring the fact that in the appeal referred to, where the Will was produced, it was only photocopy and the application was moved for bringing on record the legal representatives of the deceased. There was no opposition to this application.

Learned counsel appearing for the respondents in support of the order of the Court submits that the rejection of the application was in consonance with the provisions of the Act.

I have heard learned counsel for the parties and have gone through the record of the case.

The order passed by the Rent Controller cannot be sustained. Apart from the fact that the order is cryptic, it discloses a total non-application of mind. The Court has not considered the provisions of the Act or the law applicable. The principles for reception of secondary evidence are by now well settled by a catena of decisions. The order nowhere shows that the Court has applied its mind to the determination of the factors/circumstances required for acceptance or rejection of permission. The application has been dismissed in a slip-shod manner.

In the circumstances, these revisions are accepted. The order passed by the Rent Controller dismissing the application under Sections 65 and 66 of the Act is quashed and set aside. A further direction is issued that the trial Court will determine as to whether there exist sufficient grounds for granting

permission to lead secondary evidence or not. For this purpose, the Court will keep in mind the legal principles applicable. There shall be no order as to costs.

Parties to appear before the trial Court on ***28.12.2007***. Records of the case be sent back immediately so as to reach in the trial Court before the next date.

CMP No.410 of 2007 in CR No.75 of 2007.
CMP No.411 of 2007 in CR No.76 of 2007.

In view of the order passed in the revision petitions, these applications are disposed of. The interim order granted on 16th June, 2007 shall stand vacated.

December 6, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**